

Serial No. 09/864,113

Carl Phillip Gusler

Page 10 of 11

Section IV:
AMENDMENT UNDER 37 CFR §1.121
REMARKS

Rejections under 35 U.S.C. §103(a)

In the Office Action, the examiner has withdrawn the previous rejections. The examiner's reconsideration is appreciated by the applicant.

Examiner has issued new rejections of claims 1 - 6, 8 - 15, 17 - 24 and 26 - 27 under 35 U.S.C. §103(a) as being unpatentable over published US Patent Application, Document Number 2002/0154171, by Lee (hereinafter "Lee"), in view of US Patent Application, Document Number 2002/0095465, by Banks (hereinafter "Banks"). Examiner has issued new rejections of claims 7, 16, and 25 under 35 U.S.C. §103(a) as being unpatentable over Lees in view of Banks, in further view of US Patent Application, Document Number 2001/0034661, by Ferreira (hereinafter "Ferreira").

As such, the proposed combinations rely upon the teachings of Lee's published patent application as a primary reference for the majority of our claimed elements, steps, or limitations, with Banks or Ferreira providing teaching of steps, elements, or limitations not taught by Lee's disclosure, as identified by the Examiner, according to the Examiner's rationale stated in the Office Action.

It is not stated in the Office Action under which subsection of 35 U.S.C. §102 examiner considers Lee's published patent application to be available as prior art. However, Lee's published patent application is not available under 35 U.S.C. §102(b) because the publication date of Lee, 10/24/2002, is less than one year before our filing date of 5/24/2001. In fact, Lee's publication date is not before our filing date.

With respect to potential rejection of our claims under 35 U.S.C. §102(e)/103, MPEP 706.02(k) states:

Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same

Serial No. 09/864,113

Carl Phillip Gusler

Page 11 of 11

person or subject to an obligation of assignment to the same person."

This change to 35 U.S.C. 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999, ...

Lee's patent application was subject to assignment to International Business Machines, which has been recorded on reel 011849 at frame 0364 by the USPTO. The present patent application is also assigned to IBM, as recorded by the USPTO.

For these reasons, the proposed combinations under 35 U.S.C. §103 should be withdrawn. Reconsideration of the rejections and allowance of the claims is requested by the applicant.

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